IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FOURTEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 5503 of 2004

Between:

M/s. Heinz India Limited, Kesavanagar Colony, Mettuguda, Secunderabad rep., by its Area Sales Executive, Mr.Hari laxmikanth.

..... PETITIONER

AND

1 The Commercial Tax Officer, Musheerabad Circle, Hyderabad.
2 The Appellate Deputy Commissioner[CT] Secunderabad Division, Hyderabad.
3 The Additional Commissioner [CT]Legal, Andhra Pradesh, Nampally, Hyderabad.
4 The Commissioner of Commercial Taxes, Andhra Pradesh, Nampally, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate writ or order or direction declaring the impugned circular of Commissioner of Commercial Taxes in reference No.A1/686/2003, dated 15.9.2003 stating that Glucon D is drug and medicine under Item 37 of First Schedule to the Act as illegal and without jurisdiction and also in violation of principles of natural justice and consequently set aside the provisional assessment orders passed by 1st respondent dated 12.12.2003 for 2002-2003 & 2003-04 or in the alternative set aside the impugned circular of 4th respondent dated 15.9.2003 and direct the 2nd respondent to decide the appeals pending before him independently and restrain the 1st respondent from collecting the balance disputed tax of Rs.23,26,653/- and 12,30,178/- for the years 2002-2003 & 2003-2004 respectively.

Counsel for the Petitioner:MR.P.SRINIVASA REDDY, Advocate.

Counsel for the Respondents : GP FOR COMMERCIAL TAX

The Court made the following :

ORDER : (Per Sri Bilal Nazki, J)

Heard learned Counsel for the parties. With their consent the Writ Petition is being disposed of at this stage.

The only controversy in this Writ Petition is whether "Glucose-D" falls under entry 44-A or 37. On 15.09.2003, a Circular had been passed by the Commissioner of Commercial Taxes, informing the Chairman, Trade and Commerce Committee that "Glucose-D" would fall under "Drugs & Medicines" and will be charged in terms of Item 37 of the First Schedule. Therefore this Writ Petition is filed.

Learned Government Pleader for Commercial Taxes submits that the Commissioner of Commercial Taxes has already issued another Circular dated 04.06.2004, in which it has been stated that "Glucose-D" would fall under Item No.44-A of the First Schedule. In the light of this Circular, the earlier Circular dated 15.09.2003 stands withdrawn. Therefore, in our view, no grievance of the petitioner on this count, survives. Learned Government Pleader further submits that an appeal is pending before the appellate authority, who may be directed to dispose of the appeal, taking into consideration the Circular dated 04.06.2004. The Writ Petition is accordingly disposed of. The stay granted by this Court on 24.3.2004 shall continue till the appeal is disposed of. No costs.

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(Bilal Nazki, J)

14th July, 2004.

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(P.S.Narayana, J)

N.B:-

Copy in one week.

(B/o)

ajr.

To

1 The Commercial Tax Officer, Musheerabad Circle, Hyderabad.
2 The Appellate Deputy Commissioner[CT] Secunderabad Division, Hyderabad.
3 The Additional Commissioner [CT]Legal, Andhra Pradesh, Nampally, Hyderabad.
4 The Commissioner of Commercial Taxes, Andhra Pradesh, Nampally, Hyderabad.

5 Two C.Cs. to the Government Pleader for Commercial Taxes, High Court

Buildings,Hyderabad (O.U.T).

6 Two C.D. copies.